REMARKS/ARGUMENTS

These remarks are made in response to the Office Action of August 22, 2007 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Examiner is expressly authorized to charge any deficiencies to Deposit Account No. 50-0951.

In the Office Action, Claims 14-15 were provisionally rejected on the grounds of non-statutory obviousness-type double patenting in view of co-pending Application No. 10/705,990. A Terminal Disclaimer is being filed concurrently herewith to overcome this rejection.

Furthermore, Claims 13, 25, and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application 2001/0020249 to Shim (hereinafter Shim) in view of U.S. Published Patent Application 2004/0068586 to Xie, *et al.* (hereinafter Xie). Claims 1-11, 14-16, 19, 20, 23, and 26-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shim in view of U.S. Patent 6,067,637 to Auer, *et al.* (hereinafter Auer), in further view of U.S. Published Patent Application 2005/0038708 to Wu (hereinafter Wu). Claims 12, 17, 18, 21, 22, 24, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shim in view of Auer and Wu, and further in view of Xie.

Amendments to the Claims

Although Applicants respectfully disagree with the rejections in the Office Action, Applicants nonetheless have amended some of the claims in order to expedite prosecution of the present application by further emphasizing certain aspects of the claims. Applicants respectfully assert, however, that the claim amendments presented are not intended as, and should not be interpreted as, the surrender of any subject matter. Applicants are not conceding by these amendments that any previously submitted claims

are unpatentable over the references of record. Applicants' present claim amendments are submitted only for purposes of facilitating expeditious prosecution of the present Application. Accordingly, Applicants respectfully reserve the right to pursue any previously submitted claims in one or more continuation and/or divisional patent applications.

In this response, some of the claims have been amended to emphasize certain aspects of the claims. In particular, Claims 12, 13, 17, 21, 24, 37, and 38 have been amended to recite the additional limitation that the service selection rules for selecting among competitive web services comprise a heuristic evaluation of the competitive web services. Claim 26 has also been amended to recite a method embedded in a computer-readable storage. Such amendments are fully supported throughout the Specification. (See, e.g., para. [0063], [0083], [0084].) Claims 27-37 have also been amended to maintain consistency among the claims. No new subject matter has been introduced by these amendments.

***Applicants' Invention Predates* Xie *and* Wu**

Applicants respectfully disagree that the rejections asserted in the Office Action. Additionally, Applicants assert that any rejection under Wu or Xie, alone or in combination with any other reference, is moot because Applicants' invention predates the respective August 10, 2003 and August 26, 2003 effective dates of Wu and Xie.

Applicants conceived of their invention at least as early as December 12, 2002 and actively pursued its reduction to practice from a date prior to the effective dates of Wu and Xie. In support of their assertions of conception, diligence, and constructive reduction to practice, Applicants submit the Declarations attached hereto in accordance with 37 CFR § 1.131 along with other supporting evidence of Applicants' diligence in pursuing the present Application. The Declarations provide the sworn testimony of the

Applicants affirming their conception and continuing diligence from a time prior to the effective dates of Xie and Wu to the filing of the Application.

Along with these Declarations, Applicants also submit herewith a copy of a confidential invention disclosure, No. BOC8-2002-0129, titled "A Scheduler for Pattern Web Services," created by Inventor Boughannam (hereinafter Disclosure). The Disclosure was submitted on December 13, 2002, by Applicants to a Patent Attorney/ Intellectual Property (IP) Professional employed by the assignee of Applicants' invention, International Business Machines Corporation (IBM). The Disclosure was insubstantially modified on December 16, 2002. The description of the invention in the Disclosure, however, was not modified after the Disclosure was initially submitted. Indeed, as noted below, established IBM procedures for handling all such disclosures preclude any modification to the description of the invention once it has been submitted by an inventor. The Disclosure has not been revised subsequent to December 16, 2002.

The Disclosure explicitly describes Applicants' invention. The written description provided in the Disclosure is clear evidence of Applicants' conception of the claimed subject matter at least as early as December 12, 2002.

The Disclosure is an IBM confidential disclosure form. As such, it is a standardized document that, according to established IBM procedures, is used by IBM inventors to document the conception of an invention. Strictly-followed internal procedures established by IBM govern the use of all such confidential disclosure forms. One aspect of IBM's established procedures governing the use of such confidential disclosure forms is that no substantive modifications can be made to a confidential disclosure after it has been submitted to an IBM Patent Attorney/IP Professional.

Applicants exercised due diligence from prior to the effective dates of Xie and Wu to the date that the Application was filed. As expressly affirmed in the Declarations, Applicants, from at least the effective dates of Xie and Wu, through the filing of the

Application on November 12, 2003, worked diligently toward a constructive reduction to practice of the invention. Applicants initially worked with IBM's own in-house Patent Attorneys/IP Professionals during an internal review of the invention, including assessing the invention in the context of related literature. Subsequently, Applicants worked with Patent Attorneys retained by IBM (outside counsel) to prepare and file the Application.

Outside counsel prepared the Application consistent with long-established professional practices, according to which cases are prepared on a first-in, first-out basis unless a particular application is associated with a bar date; those applications associated with bar dates are granted priority within the work queue. Outside counsel followed this professionally-accepted practice in preparing the Application in this case.

The written description and each of the claims of the Application were prepared based upon the Applicants' attached Disclosure. Moreover, according to IBM's established procedures governing the use of such disclosures, and according to Applicants' sworn testimony in the Declarations, the inventors reviewed the Application prior to its submission to the U.S. Patent and Trademark Office in order to ensure that the claims and written description contained therein were fully supported by the Disclosure.

Other documentary evidence supporting Applicants' claims of due diligence is submitted herewith in the form of various supporting documents. Exhibit "A" is a communication from Applicants on May 27, 2003 responding to results of a patentability search conducted by IBM's Patent Attorneys/IP Professionals. Exhibit "B" is a letter from an IBM Patent Attorney requesting outside counsel to prepare the Application, dated May 28, 2003. Exhibit "C" is a letter from outside counsel confirming receipt of the instructions, dated May 30, 2003. Exhibit "D" is a series of communications (September 30, 2003 to October 31, 2003) requesting review and final approval of the Application drafted by outside counsel prior to filing of the present Application. Approval of the Application is evidenced by Applicants' signatures, respectively dated

between October 21, 2003 and November 11, 2003, on the Declaration and Power of Attorney filed with the Application on November 12, 2003 (a copy is included in this response for convenience and labeled Exhibit "E").

Applicants respectfully submit that it was reasonable for them and the Assignee of their invention, IBM, to rely on outside counsel in preparing the Application, and that outside counsel acted with diligence. Applicants and outside counsel operated under the constraints of other work obligations while preparing the Application. As noted in MPEP § 2138.06, inventors and their patent attorneys are never required to drop all other work to deal with an issue in a patent application. Applicants therefore submit that Applicants and their Patent Attorneys diligently pursued completion and filing of the present application without any unreasonable delays.

Accordingly, Applicants respectfully submit that Applicants' Declarations, coupled with the documentary evidence of specific activity on specific dates, clearly evidences Applicants' prior conception and diligence in pursuing a reduction to practice from a time prior to the effective dates of Xie and Wu. Applicants therefore respectfully request withdrawal of the rejections under Xie or Wu.

Claims Define Over the Cited References

Even though Applicants assert above that Xie and Wu are not applicable references, Applicants nonetheless submit that the amended Claims 12, 13, 17, 21, 24, 37, and 38 define over the references of record. In particular, Applicants respectfully submit that these claims, as amended, define over Xie.

In particular, Applicants respectfully submit that Xie, alone or in combination with any other reference of record, fails to disclose or suggest the use of service selection rules comprising a heuristic evaluation of competitive Web services. According to the Office Action, Xie is cited for disclosing the step of comparing identified service activation rules

with one or more service selection rules. However, according to Xie, the service selection rules only comprise service selection based on owner or licensee preferences. (See, e.g., para. [0070], lines 10-13.) In Xie, an "owner" or "licensee" is the registered owner/user of the request. (See, e.g., para [0070], lines 4-6.) Therefore, in response to each request, a particular service is exclusively used. Nowhere does Xie disclose or suggest that the selection rules would be based on anything other than the owner/user preferences. In contrast, the amended claims explicitly recite the limitation that the selection rules comprise a heuristic evaluation of the competitive Web services. A "heuristic" evaluation as known to those of ordinary skill in the art can include making a determination of which of the competitive services is best to use, based on trial and error. Accordingly, as more of the Web services are used and tested, a more efficient service selection rule can be used to process similar types of requests. That is, rather than rely on a preferred Web service exclusively, the system can evaluate the various services and intelligently generate rules for processing certain types of requests more efficiently by determining, which of the competitive services would be more efficient for the type of request.

Accordingly, Applicants respectfully submit that Claims 12, 13, 17, 21, 24, 37, and 38, as amended define over the remaining references of record. Applicants further submit that any other claims depending from one of amended Claims 12, 13, 17, 21, 24, 37, and 38 and reciting additional features, likewise defines over the references of record.

CONCLUSION

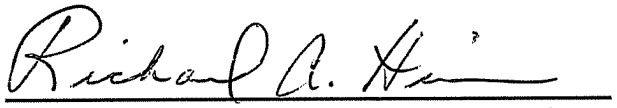
Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the

Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

AKERMAN SENTERFITT

Date: November 21, 2007



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